HIGH COURT OF CHHATTISGARH, BILASPUR

Transfer Petition (Cr.) No. 04/2006

PETITIONER Rajkumar Mishra, S/o Late Ganesh Prasad Mishra, Aged about 36 years, Mishra Glass, Haldibari Chirimiri, District – Korea (C.G.)

Versus

RESPONDENT Smt. Rita Chaubey, W/o Shri Rajkumar Mishra, Aged about 34 years, R/o New Bhatti Road, Near Chitrakod Chowk, Ambikapur, District : Surguja (C.G.)

Appearance:

Petitioner namely Rajkumar Mishra appears in person.

ORAL ORDER
(15.06.2007)

SUNIL KUMAR SINHA, J.

Heard on admission.

The petitioner appearing in person mainly argues for transfer of 2 M.J.Cs bearing No.217/2005 and 405/2005 pending before the Family Court, Ambikapur, District – Sarguja (C.G.). It appears that the first M.J.C. i.e. 217/2005 is an original proceeding filed under Section 125 of the Code of Criminal Procedure for grant of monthly maintenance to the respondent-wife and their child and the second MJC No.405/2007 is the execution proceeding filed under Section 125(3) Cr.P.C. regarding recovery of arrears of interim maintenance granted in favour of the wife and child.

The petitioner raises two points for transfer of both the cases. His first grievance is that so far as MJC No.405/2007 regarding execution is concerned, the Family Court is not conducting the case in a fair and proper manner, as the said Court granted permission to

the petitioner's wife regarding appointment of a lawyer as "*amicus curiae*" in the said matter, whereas, the application of this petitioner for appointment of a lawyer from his side was dismissed by the said Court on 21/6/2006. He refers to the order sheets dated 27.10.2005 and 21/06/2006 passed in the aforesaid Miscellaneous Judicial Case.

His second grievance is that so far as the original Case No.217/2005 is concerned, the Family Court has utterly failed to draw an effective proceeding of conciliation between the parties and only on the statement made by the respondent-wife on 21/6/2006 that on that date, she was residing separately from the petitioner, the proceedings of Section 125 Cr.P.C. were not terminated and they were allowed to continue. He refers to the order sheet dated 21/6/2006 recorded by the Family Court in MJC No.217/2005. The petitioner submits that on these grounds, he is apprehending that he will not get fair decision from that Court and it is expedient in the interest of justice that both the proceedings, pending before the Family Court, Ambikapur, should be transferred to some other Court.

During the course of arguments, the petitioner also stated orally that he had paid about Rs.22,000/- against the arrears of interim maintenance to the respondent, but even after that, without determining the correct amount of balance and further without looking into the possibility of conciliation, the Family Court has passed an order of warrant of arrest against him and this is also one of the grounds for seeking transfer of the cases from the said Court.

I have heard the petitioner at length and have also perused the copies of various order sheets filed by him alongwith the Transfer Petition.

The law with regard to transfer of cases is well settled. The Apex Court held in the matter of ***Gurucharan Dass Chadha –Vs- State of Rajasthan, AIR 1966 S.C. 1418*** that a case is transferred if there is a reasonable apprehension on the part of a party to a case that justice will not be done. The Apex Court said that a petitioner is not required to demonstrate that justice will inevitably fail. He is entitled to a transfer if he shows circumstances from which it can be

inferred that he entertains an apprehension and that it is reasonable in the circumstances alleged. The Apex Court further held that it is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. However, a mere allegation that there is apprehension that justice will not be done in a given case does not suffice. The Court has further to see whether the apprehension is reasonable or not. The Apex Court also said that to judge of the reasonableness of the apprehension the state of the mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must not only be entertained, but must appear to the Court to be a reasonable apprehension.

It was further held by the Apex Court in the matter of ***Mrs. Maneka Sanjay Gandhi and another –Vs- Miss Rani Jethmalani, AIR 1979 S.C. 468*** that assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievance. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. The Apex Court, in the facts and circumstances of the case, said that the grounds for the transfer have to be tested on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any Court having jurisdiction and the accused cannot dictate where the case against him should be tried. It further said that even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances.

If we apply the above principles in the present case, it does not appear to this Court that the grounds pressed by the petitioner for the purpose of transfer of the cases are the sufficient grounds, on which, the petitioner may entertain apprehension that he will not get fair decision or justice from that Court.

Needless to say that such orders are often passed in the cases and there may also be the cases in which the Court may lead to some wrong notion, while passing any order or while dealing with the cases of the parties, but in all such cases, it does not necessarily mean that on those grounds, the aggrieved party may entertain an apprehension that he will not get fair justice from the said Court.

In the opinion of this Court, in the facts and circumstances, referred to above and on the grounds pressed by petitioner, who appears in person, no case of transfer is made out.

This petition is not worth admission and the same is dismissed at the motion stage itself.

However, looking to the peculiar facts and circumstances of this case, since the matter relates to the Family Court, particularly between the husband and wife and there is also a child and the petitioner expressed before me that he is ready for conciliation, it is observed that the Family Court would explore every possibility to get the matter conciliated between the parties so that, if possible, the husband and wife may resume and get advantage and the matter is also disposed of on conciliation offered by the said Court.

It is also observed that if the petitioner is aggrieved by any particular action or order of the Court, he is free to avail appropriate remedy in accordance with law.

Sd/-
SUNIL KUMAR SINHA
Judge

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